IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO :7409 of 2004

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Dated: 22nd March 2006.

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Between:

Kunisetty Satyanarayana

..... PETITIONER

AND

The Union of India rep. by Director General of Postal Services, and another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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W.P.NO.7409 OF 2004

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The unsuccessful applicant in O.A.No.328 of 2004 on the file of the Central Administrative Tribunal, Hyderabad, is the petitioner herein.

The petitioner was initially appointed as a Clerk in the Postal Department of the Union of India on 30-11-1965, on the basis of the marks obtained by him in the S.S.L.C. Examination. Admittedly, his appointment was under the open category, but not against any slot reserved in favour of any constitutionally protected group of citizens. However, it appears, in his service register against the column of social status it was entered that he belongs to a community called 'Kondakapu', which community, admittedly, is a reserved community classified as Scheduled Tribe. From the record it appears that the basis for such an entry is the entry made in the S.S.L.C. certification of the petitioner indicating that he belongs to 'Kondakapu' community. In December 1976, the petitioner appeared for a departmental test, conducted for the purpose of considering his case along with the qualified others, for the purpose of promotion to the post of Upper Division Clerk. The petitioner was successful in the said test and by an order dated 27-12-1976 he was promoted as an Upper Division Clerk. In the year 1987, the petitioner was further promoted to the next higher post.

On 28-11-1994, the then Postmaster General of Hyderabad Circle issued a show-cause notice to the petitioner calling upon him to explain why disciplinary action should not be initiated against him for giving false information and also for having produced a bogus caste certificate. The petitioner gave explanation on 07-12-1994.

On a consideration of the said explanation, Proceedings dated 03-01-1995, were issued by the 2nd respondent's office, which is as follows:

> " After considering the representation dated 7-12-94 of Shri K.Satyanarayana, Section Supervisor of this office, the Chief Postmaster General has ordered that Shri K.Satyanarayana, S.S., may be treated as belonging to 'C.C.', Community for all purposes with immediate effect instead of 'S.T.'."

In substance, no further action, except stated in the above extracted portion of the proceeding, was initiated.

On 02-12-2003, the petitioner was further promoted as Deputy Office Superintendent, on *ad hoc* basis. The relevant portion of the order reads as follows:

> "Consequent on identification of the post of Dy O S II as HSG II vide Letter.No. EST/2-36/2001 dt 2-12-2003, the following transfers and postings are ordered by the competent authority with immediate effect and until further orders.
>
> 1. Sri K. Sathyanarayana, SS (PLI General), CO to be Dy OS II, CO on adhoc basis.
> 2. Sri G.Nageswara Rao, Dy O S II, CO to be SS (PLI General) vide Sri K. Satyanarayana above."

However, on 23-12-2003, the 2nd respondent issued proceedings proposing to hold an enquiry against the petitioner on two charges indicated in the annexure to the said proceedings, which reads as follows:

> "Article-I
>
> That the said Sri K. Satyanarayana, while working as T/S Clerk, in Secunderabad Postal Division w.e.f.3.6.1996, appeared in the examination held on 19.9.76 for promotion to U.D.C. cadre and was selected for appointment as UDC against a post reserved for 'ST' community. Sri K.Satyanarayana accepted the appointment and jointed as UDC at the Office of Postmaster General, A P Circle, Hyderabad on 3.9.1977 and continued to work as such till 31.12.87 the day on which he was promoted to LSC grade. The Government Andhra Pradesh Social Welfare Department in it's G.O.Ms.No.28 dated 17.2.2001 has declared that the Said Sri K.Satyanarayana does not belong to "Konda Kapu" and does not belong to Scheduled Tribe.

It is, therefore, alleged that the said Sri K.Satyanarayana, by accepting his appointment as UDC against a post reserved for ST community and working as such from 3.9.77 to 30.12.1987, has irregularly availed the benefits extended to the officials belonging to ST community suppressing the fact of his not belonging to ST Community, thereby failed to maintain absolute integrity and acted in a manner unbecoming of a government servant contravening the provisions of Rule 3(1)(i) and 3(1)(iii) of CCS(Conduct) Rules, 1964.

Article-II

That the said Sri K.Satyanarayana, while working as UDC, O/o Chief Postmaster General, A P Circle, Hyderabad from 3.9.77 and officiating as DO (PLI), CO, Hyderabad from 24.11.81, was selected to the cadre of 20% LSG in Circle Office against 2/3 quota of vacancies and against a vacancy reserved for ST community, by the DPC held on 17.12.87. He assumed charge in LSG at CO Hyderabad, on 31.12.87 and continued to work in the LSG till 26.6.93 the day on which he was promoted to HSG-II (i.e., BCR) grade. The Government of Andhra Pradesh Social Welfare Department in it's G.O.Ms.No.28 dated 17.2.2001 has declared that the Said Sri K.Satyanarayana does not belong to "Konda Kapu" and does not belong to Scheduled Tribe.

It is, therefore, alleged that the said Sri K. Satyanarayana, by accepting his appointment in LSG cadre against a post reserved for ST community and by working as such from 31.12.87 to 25.693, has irregularly availed the benefits extended to the officials belonging to ST community suppressing the fact of his not belonging to ST Community, and thereby failed to maintain absolute integrity and acted in a manner unbecoming of a government servant contravening the provisions of Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

Aggrieved by the same, the petitioner approached the Central Administrative Tribunal in O.A.No.320 of 2004, which stood dismissed by an order, dated 15-03-2004, hence, the present writ petition.

The learned counsel for the petitioner argued that the recruitment of the petitioner to the post of Clerk in the year 1965 was in the open category, but not on the basis of any reservation. Neither his promotion in the year 1976 nor to the next higher post in the year 1987, were made on the basis of any claim made by him, as a person belonging to the Schedule Tribe Community. The petitioner does admit in his pleading in the original application that though he produced a caste certificate stating that he belongs to a community called 'Kondakapu', which is identified as

Scheduled Tribe in the State of Andhra Pradesh, he never claimed any benefit out of such caste certificate. Such a certificate came to be issued in view of the fact that an entry was made in the school register when he was a child, that he belongs to 'Kondakapu'community, at which point of time, obviously, he was a minor. Therefore, there could neither be any *mala fide* intention on the part of the petitioner nor can he be held guilty of any misrepresentation regarding his social status.

The learned counsel further submits that coupled with the absence of any such *mala fides* on the part of the petitioner, he never claimed any benefit in his entire service on the basis of the community, which is entered in his service register, the then Postmaster General thought it fit not to initiate any further proceedings against the petitioner except to make an order that the case of the petitioner, should henceforth be considered as a person belonging to the open category. Therefore, the Proceedings dated 23-12-2003, by which the petitioner was called upon to face an enquiry, is an abuse of the disciplinary process, available to the respondents and the Tribunal is not justified in dismissing the petitioner's O.A.

Since the O.A., was dismissed at the stage of admission, the respondents did not have an opportunity of filing a counter-affidavit before the Tribunal. However, they filed a counter-affidavit in the present writ petition. The counter-affidavit does not specifically deny the averment of the petitioner that he never claimed the benefit of his social status as indicated in the service register. While, at Paragraph No.5 of the counter-affidavit the respondents admitted that the petitioner was initially recruited as a Postal Assistant in the general category, they asserted that his subsequent promotions as U.D.C and LSG, were against the positions reserved for Scheduled Tribe community. On the other hand, the respondents blamed the petitioner for accepting the promotion as a candidate belonging to the Scheduled Tribe community. In an equivocating statement contained in Paragraph No.4 of the counter-affidavit, the respondents stated as follows:

> " In reply to para.4 of the affidavit in WP, it is submitted that the contention of the petitioner that he never claimed ST status and his promotion on that basis as UDC and LSG cadres were without any representation, is also unsustainable as the petitioner is aware of the same as he was promoted ahead of many OC candidates by virtue of the reservation. Xxxx."

Copies of the orders of promotion are also filed in the material papers filed along

with the writ petition. The order dated 27-12-1976, by which the petitioner was promoted as U.D.C, does not even clearly indicate that the petitioner was promoted against a slot reserved for the Scheduled Tribes. The relevant portion of the said order reads as follows:

> " The list of candidates who have been selected for appointment as Upper Division Clerks in Circle, and Administrative Offices on the results of the above mentioned examination is given in the Annexure to this circular. The names of the candidates have been arranged in the order of merit except those candidates who have been bracketed together. In respect of the bracketed candidates, the order of merit will be determined in accordance with the principles laid down in letter No. 27-24/65-NCG dated 7th April, 1966.
>
> 2.In a case where the full quota reserved for Lower Division Clerks is not taken up by the officials of that category, the surplus vacancies have been transferred to the subordinate offices quota and vide versa wherever possible. In respect of vacancies reserved for Scheduled Caste and Scheduled Tribe candidates for which qualified candidates are not available in either group, qualified candidates of other communities have not been selected as dereservation orders are required to be obtained before filling such reserved vacancies.
>
> 3.The names of the candidates against roll numbers appeared have been shown as furnished by the circles etc. if there are any mistakes on the names of the candidates are noticed the same may please be corrected by you and the corrections intimated to this office also.
>
> 4.In respect of candidates, if any, whose admission to the examination is provisional, the selection is subject to the final decision regarding their eligibility to take the examination.
>
> Sd/- (S.M.MULLICK)
>
> ASSTT. DIRECTOR GENERAL (DE+II)

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ANNEXURE

ANDHRA POSTAL CIRCLE

LDCs of Cricle Office Name of the Candidates

Sl.No. Roll No.

1. AD-2 M.A.Mannan

T/S Clerks of Sub-ordinate Offices

Roll No. Divn

1 AD-46 SD HO J.V.Paul

2 AD-123 SKLM B.Mohana Rao (APS)

3 AD-38 SD Divn D.Arjunan Nair

4 AD-14 Hyd 11 S.Sadanand (SC)

5 AD-101 NZB 11 A.Balaiah

6 AD-131 V Divn T.Subbarayadu

7 AD-30 SD Div K.Satyanarayana (ST)"

No doubt, under the last column titled 'name of the candidate', the petitioner, whose name was shown as 7th of the promoted candidates, was shown, to be Scheduled Tribe. Whether such showing was the description of the petitioner's social status as per the records of the respondents; or, that the petitioner's promotion as UDC is to a slot reserved for Scheduled Tribes, is not clear. At any rate, there is nothing in the document to indicate the category in which the petitioner was promoted against a slot reserved for Scheduled Tribes. Even, insofar as the subsequent promotion under the orders dated 28-12-1987 of the 2nd respondent, there is no indication that the promotion was against a slot reserved for the Scheduled Tribes.

Assuming for the sake of argument that on both the occasions the petitioner was promoted against the slot reserved for Scheduled Tribes, there is no material on the record to show that the petitioner made efforts to secure such a promotion on the basis of reservation. It is possible that the petitioner could not have been promoted against a reserved slot by the respondents either because of misunderstanding of the law; examples for such an exercise are not lacking, or, in the alternative, though the petitioner is entitled to be promoted against an open category because of his performance and merit, he was promoted against a reserved slot. The fact remains that the respondents have not placed any material on record to show that the petitioner ever claimed the benefit of his profess service on any one of the three occasions. On the other hand, even the charges framed against the petitioner do not make any such allegation that he claimed the benefit of his social status. The language of Article-1 of the charge, to the extent it is relevant, is very diplomatic and is to the following effect:

> " That the said Sri K. Satyanarayana, while working as T/S Clerk, in Secunderabad Postal Division w.e.f. 3.6.1966, appeared in the examination held on 19.9.76 for promotion to U.D.C. cadre and was selected for appointment as UDC against a post reserved for 'ST' community. Sri K.Satyanarayana **accepted** the appointment and joined as UDC at the Office of Postmaster General, A.O. Circle, Hyderabad on 3.9.1977 and continued to work as such till 31.12.87 the day on which he was promoted to LSG grade. xxxxxxx"

Nothing is brought to our notice in the Rules, governing the service conditions of the petitioner, which makes it a misconduct to accept a promotion, which was never indicated as a promotion against a reserved slot.

The learned counsel for the respondent, however, argued that the O.A. itself was premature as the petitioner instead of offering his explanation and facing the enquiry, rushed the Tribunal, short-circuiting the judicial process. The learned counsel relied upon a decision of the Supreme Court in UNION OF INDIA AND ANOTHER v. ASHOK KACKER , wherein it was held that approaching the Tribunal without even submitting reply to the charge-sheet is a premature invocation of the judicial process.

We are of the opinion, however, that the principle laid down in the said judgment cannot be applicable to the facts of the present case for the reason that it is not for the first time that such an enquiry is contemplated against the petitioner. Earlier such an attempt was made as already noticed by us above. The decision cited by the learned counsel for the respondents is not an authority for the proposition that even in a case where successive attempts are made by the employer to institute a disciplinary enquiry on the same set of allegations, the employee is totally debarred from approaching the judicial fora for an appropriate relief. Apart from the fact that the disciplinary enquiry, in question before us, is a second attempt on the same set of allegations, against the petitioner, the facts narrated above, in our view, clearly justify to exercise the jurisdiction of this Court.

For the foregoing discussion the writ petition is, therefore, allowed as prayed for.

J.Chelameswar, J

M.Venkateswara Reddy, J

mrk

22nd March 2006.